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SERIES II No. 29

OFFICIAL GAZETTE



GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

Note:- There are three Extraordinary issues to the Official Gazette, Series II No. 28 dated 11-10-2018 as follows:—

- (1) *Extraordinary dated 11-10-2018 from pages 549 to 550 regarding Notifications from Department of Finance.*
- (2) *Extraordinary (No. 2) dated 16-10-2018 from pages 551 to 552 regarding Order and Notification from Department of Elections.*
- (3) *Extraordinary (No. 3) dated 16-10-2018 from pages 553 to 554 regarding Notifications from Goa Legislature Secretariat.*

GOVERNMENT OF GOA

Department of Agriculture

Directorate of Agriculture

Order

No. 2/9/95-AGR/2018-19/Part(II)/201

On recommendation of the Departmental Promotion Committee conveyed by Goa Public Service Commission vide their letter No. COM/II/11/2(3)/2011/220 dated 03-10-2018, Government is pleased to promote the following Assistant Directors of Agriculture to the post of Dy. Director of Agriculture, Group 'A' Gazetted, in the Directorate of Agriculture on regular basis in the pay scale of PB-3 Rs. 15,600-39,100+Grade Pay of Rs. 6,600/- (Level-11 of the pay matrix) with immediate effect:

- 1) Shri Nevil I. H. Alphonso.
- 2) Smt. Ana Dias e Camara.

On promotion they are posted as below:

Sr. No.	Name of the officer	Place of posting on promotion on regular basis
1.	Shri Nevil I. H. Alphonso	Dy. Director of Agriculture (CIN), Directorate of Agriculture, Tonca, Caranzalem.
2.	Smt. Ana Dias e Camara	Shall continue as Dy. Director of Agriculture (Extension), Directorate of Agriculture, Tonca, Caranzalem.

The above officers shall exercise their option within one month from the date of promotion to fix his pay in terms of F.R. 22(I) (a) (1).

By order and in the name of the Governor of Goa.

Nelson X. Figueiredo, Director & ex officio Joint Secretary (Agriculture).

Tonca-Caranzalem, 5th October, 2018.

Order

No. 2/9/95-AGR/2018-19/Part(II)/205

On recommendation of the Departmental Promotion Committee conveyed by Goa Public Service Commission vide their letter No. COM/II/11/2(1)/2017/219 dated 03-10-2018, Government is pleased to promote and appoint the following Agriculture Officers, Group 'B' Gazetted to the post of Assistant Director of Agriculture, Group 'A' Gazetted on officiating basis in the pay band of Rs. 15,600-39,100+ Rs. 5,400/- Grade Pay which is at Level-10 of the 7th Pay Commission Matrix with immediate effect until further orders or till the post is filled on regular basis whichever is earlier:

- 1) Shri Rajesh B. Dessai.
- 2) Smt. Shoban Ugvenkar.

On promotion on officiating basis they shall be posted as below:

Sr. No.	Name of the officer	Place of posting on officiating basis	Budget Head
1.	Shri Rajesh B. Dessai	Shall continue as Assistant Director of Agriculture (Farms), Directorate of Agriculture, Tonca, Caranzalem	2401 – Crop Husbandry; 00 – 001 – Direction & Administration; 02 – Superintendence (NP); 01 – Salaries.
2.	Smt. Shoban Ugvenkar	As Assistant Director of Agriculture (Extension) against the vacancy caused due to transfer Shri Satej G. Kamat	2401 – Crop Husbandry; 00 – 001 – Direction & Administration; 03 – Subordinate & Expert Staff (NP); 01 – Salaries.

By order and in the name of the Governor of Goa.

Nelson X. Figueiredo, Director & ex officio Joint Secretary (Agriculture).

Tonca-Caranzalem, 5th October, 2018.

Order

No. 2/9/95-AGR/2018-19/Part(II)/202

On recommendation of the Departmental Promotion Committee conveyed by Goa Public Service Commission vide their letter No. COM/II/11/2(3)/2011/220 dated 03-10-2018, Government is pleased to promote and appoint Shri Chintamani B. Perni, Assistant Director of Agriculture to the post of Deputy Director of Agriculture, Group 'A' Gazetted on officiating basis in the pay band of Rs. 15,600-39,100+Rs. 6,600/- Grade Pay which is at Level-11 of the 7th Pay Commission Matrix with immediate effect until further orders or till the post is filled on regular basis whichever is earlier. On promotion on officiating basis he is posted as Dy. Director of Agriculture (Horticulture), under Budget Head "2401—Crop Husbandry; 00—; 001—Direction and Administration; 02—Superintendent (NP); 01—Salaries."

By order and in the name of the Governor of Goa.

Nelson X. Figueiredo, Director & ex officio Joint Secretary (Agriculture).

Tonca-Caranzalem, 5th October, 2018.

Order

No. 2/9/95-AGR/2018-19/Part(II)/203

Government is pleased to order the transfer of Shri Satej G. Kamat, Assistant Director of Agriculture (Extension), Group 'A' Gazetted against the post of Assistant Director of Agriculture (Planning & Evaluation) vacated by Shri Chintamani B. Perni on promotion with immediate effect.

By order and in the name of the Governor of Goa.

Nelson X. Figueiredo, Director & ex officio Joint Secretary (Agriculture).

Tonca-Caranzalem, 5th October, 2018.

Order

No. 2/9/95-AGR/2018-19/Part(II)/204

On recommendation of the Departmental Promotion Committee conveyed by Goa Public Service Commission vide their letter No. COM/II/11/2(1)/2017/219 dated 03-10-2018, Government is

pleased to promote Shri Sandeep B. Fol Dessai, Agriculture Officers, Group 'B' Gazetted to the post of Assistant Director of Agriculture, Group 'A' Gazetted, in the Directorate of Agriculture on regular basis in the Pay Band of PB-III Rs. 15600-39100+Rs. 5400 Grade Pay (Level-10 of the Pay Matrix) with immediate effect.

On promotion, Shri Sandeep B. Fol Dessai shall continue on deputation against the post of General Manager in the Goa State Horticulture Corporation Ltd.

Shri Fol Dessai shall be on probation for a period of two years from the date of his joining.

He shall exercise option within one month from the date of promotion to fix his pay in terms of F. R. 22(I) (a) (1).

By order and in the name of the Governor of Goa.

Nelson X. Figueiredo, Director & ex officio Joint Secretary (Agriculture).

Tonca-Caranzalem, 5th October, 2018.

Order

No. 2/9/95-AGR/2018-19/Part(I)/206

On recommendation of the Departmental Promotion Committee conveyed by Goa Public Service Commission vide their letter No. COM/II/11/2(1)/2011/217 dated 03-10-2018, Government is pleased to promote Shri Raghunath S. Joshi, Assistant Agriculture Officer to the post of Agriculture Officer, Group 'B' Gazetted, in the Directorate of Agriculture on regular basis in the Pay Band of PB-II Rs. 9,300-34,800+Rs. 4,600 Grade Pay (Level-7 of the 7th Pay Commission Matrix) with immediate effect.

On promotion he shall continue at the same place of his posting as shown below:

1) Shri Raghunath S. Joshi, Zonal Agriculture Officer, Zonal Agriculture Office, Mapusa.

Shri Raghunath S. Joshi shall exercise his option within one month from the date of promotion to fix his pay in terms of F. R. 22(I) (a) (1).

By order and in the name of the Governor of Goa.

Nelson X. Figueiredo, Director & ex officio Joint Secretary (Agriculture).

Tonca-Caranzalem, 5th October, 2018.

Order

No. 2/9/95-AGR/2018-19/Part(I)/207

On recommendation of the Departmental Promotion Committee conveyed by Goa Public Service Commission vide their letter No. COM/II/11/2(1)/2011/217 dated 03-10-2018, Government is pleased to promote and appoint Smt. Vaibhavi V. Dessai, Assistant Agriculture Officers, Group 'B' Gazetted to the post of Agriculture Officer on officiating basis in the pay band of Rs. 9,300-34,800+Rs. 4,600 Grade Pay which is at Level-7 of the 7th Pay Commission Matrix with immediate effect until further orders or till the posts are filled on regular basis whichever is earlier. She shall continue at the same place of her posting as shown below:

Smt. Vaibhavi V. Dessai,	2402 – Soil and Water
Agriculture Officer	Conservation;
(North-II), District	00 –
Agriculture Office, North,	001 – Direction and
Tonca, Caranzalem	Administration;
	01 – Establishment
	(NP);
	01 – Salaries.

By order and in the name of the Governor of Goa.

Nelson X. Figueiredo, Director & ex officio Joint Secretary (Agriculture).

Tonca-Caranzalem, 5th October, 2018.

Order

No. 1/22/89/2018-19/D.Agr/924

Read: Order No. 4/6/2017-PER/2872 dated 18-09-2018.

In pursuance to above referred order, Shri Madhav B. Kelkar, senior most Dy. Director of Agriculture, presently on deputation against the post of Managing Director in Goa State Horticulture Corporation Ltd., shall hold the routine charge of the post of Director of Agriculture, in addition to his own duties during the leave period of Shri Nelson X. Figueiredo, Officiating Director of Agriculture w.e.f. 08-10-2018 to 19-10-2018.

By order and in the name of the Governor of Goa.

Nelson X. Figueiredo, Director & ex officio Joint Secretary (Agriculture).

Tonca-Caranzalem, 5th October, 2018.

Order

No. 8/17/2018-19/D.Agr/214

On the recommendation of the Departmental Promotion Committee conveyed by the Goa Public Service Commission vide their letter No. COM/II/11/2(1)/2012/178 dated 07-08-2018, Government is pleased to promote Shri Sobhadra P Naik, Technical Assistant Group 'C' to the post of Mechanical Cultivation Officer, Group 'B' Gazetted in the pay scale Rs. 9,300-34,800+Grade Pay of Rs. 4,600/- (Level-7 of the 7th Pay Commission Matrix) on regular basis against the vacancy caused due to superannuation of Shri Anthony Rego, and is posted at Mechanical Cultivation Office, Curchorem against the post being vacated on transfer by Shri Sadanand Harmalkar, Mechanical Cultivation Officer, Curchorem with immediate effect.

Shri Sobhadra P. Naik, shall be on probation for a period of two years from the date of his joining.

He shall exercise option within one month from the date of promotion to fix his pay in terms of F.R. 22(I) (a).

By order and in the name of the Governor of Goa.

Madhav B. Kelkar, Director & ex officio Joint Secretary (Agriculture).

Tonca-Caranzalem, 15th October, 2018.

Corrigendum

No. 2/9/95-AGR/2018-19/Part(II)/211

Read: Order No. 2/9/95-AGR/2018-19/Part(II)/205 dated 05-10-2018.

In the above referred order, the name of the officer at Sr. No. 2 may be read as "Smt. Shobhan S. Ugavekar" instead of "Smt. Shoban Ugvenkar".

By order and in the name of the Governor of Goa.

Madhav B. Kelkar, Director & ex officio Joint Secretary (Agriculture).

Tonca-Caranzalem, 8th October, 2018.

Department of Industries**Order**

No. 3/11/2018-IND/407

Government of Goa is pleased to appoint Goa Investment Promotion & Facilitation Board (Goa-IPB) as "Nodal Agency" to create Action-

oriented plan to achieve a Gross Domestic Product (GDP) of USD 5 trillion before 2025 and to nominate Chief Executive Officer of Goa-IPB as Nodal Officer on behalf of State Government.

By order and in the name of the Governor of Goa.

A. S. Mahatme, Under Secretary (Industries).

Porvorim, 10th October, 2018.

Department of Information Technology**Notification**

No. 1/90/DoIT/ITG-DIR/2001/1263

In partial modification of earlier Notification No. 1(90)/DOIT/ITG-DIR/2001/342 dated 05-07-2017, reconstituting the board of Info Tech Corporation of Goa Limited, and in pursuance of Clause 116 (2) (b) and (c) of the Articles of Association of Info Tech Corporation of Goa Limited, Government of Goa is pleased to appoint Shri Aditya Prakash Nagvenkar, resident of PDA Colony, House No. 406/17, Plot No. 93, Pushpraj, Pilerne, Bardez-Goa as Director in place of Shri Savio Noronha, Director with immediate effect.

Consequently Shri Savio Noronha, Director at Sr. No. 5 of the said Notification dated 05-07-2017 stands removed from the post of Director with immediate effect.

By order and in the name of the Governor of Goa.

Srinet N. Kothwale, Director (IT).

Panaji, 3rd October, 2018.

Department of Labour**Notification**

No. 28/3/2018-LAB/644

The following award passed by the Labour Court-II, at Panaji-Goa on 20-07-2018 in reference No. LC-II/IT/05/14 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

A. S. Mahatme, Under Secretary (Labour).

Porvorim, 24th September, 2018.

THE LABOUR COURT-II
GOVERNMENT OF GOA

AT PANAJI

(Before Shri Suresh N. Narulkar, Hon'ble
Presiding Officer)

Case No. LC-II/IT/05/14

Shri Gautam Gauns,
H. No. 557/D, Vodlem Bhat,
Taleigao-Goa. Workman/Party-I

V/s

M/s. Diago India Pvt. Ltd.,
Lower Parel, Mumbai. Employer/Party-II

Party-I/Workman is represented by Adv. Shri V. Pangam.

Party-II/Employer is represented by Adv. Shri G. K. Sardessai.

Panaji, dated: 20-07-2018.

AWARD

1. In exercise of the powers conferred by Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by Order dated 07-08-2014 bearing No. 28/22/2014-Lab/444 referred the following dispute for adjudication to this Labour Court-II.

"(1) Whether the action of the management of M/s Diago India Private Limited, Mumbai in terminating services of Shri Gautam Gauns, Customer Activation Manager, with effect from 07th October, 2013, is legal and justified?"

(2) If not, what relief the workman is entitled to?"

2. On receipt of the reference, a case was registered under No. LC-II/IT/05/2014 and registered A/D notice was issued to the Parties. In pursuance to the said notice, the parties put in their appearance. The Workman/Party-I (for short 'Workman'), filed his Statement of Claim on 09-01-2015 at Exb.3. The facts of the case in brief as pleaded by the Workman that he was working as 'Customer Activation Manager' with the Employer/Party-II (for short, 'Employer') being based at Goa w.e.f. 13-12-2012. He stated that the Employer is carrying the business of manufacturing, importing, marketing and selling alcoholic beverages in India. He stated that prior to joining the services of the Employer, he was working with ITC Limited (Konkan branch) as an area executive from 26-09-2007 till December, 2012. He stated that as an area executive, his work profile was achievement of agreed sales

expectations, monitor actual sales against expectations, implementation of market and outlet coverage plans, adherence to fixed call frequency for self and customer groups, infrastructure as per plan, visible availability, ensure freshness as per norms, cost effective order captured and efficient delivery systems, implementation of trade and consumer schemes, quality execution of merchandising activity, evaluation and feedback, launching new products of the company and budget control (trade schemes/contracts). He stated that during his tenure with the ITC Ltd., he handled channel sales, Horeca and modern trade business of all ITC products like cigarette, food division and personal care.

2. He stated that the Employer, after going through the curriculum vita of the Party I painted a rosy picture for taking employment with them with handsome remuneration around Rs. 46,200/- p.m., in addition to other allowances based on the sales performance and had also assured future better prospects as a result he resigned from his previous work for joining the Employer as they offered the work of 'Customer Activation Manager' for the State of Goa and South Maharashtra. He stated that as a 'Customer Activation Manager' for the State of Goa and South Maharashtra, the work profile was execution of regional activity calendar to agreed scale delivering on time, in full and within budget, track and control execution standards ensuring clear visibility of performance and operational effectiveness, manage agencies that support delivery of world class execution, region value/volume grow, ensure world class execution to agreed scale, within budgets and on time for all planned activities, profitable deployment of trade and brand investment within the region, execution of region specific calendar, always aligned to the national activity calendar, ensure strong relationship with third party agencies and customer to drive flawless execution, complete annual P4G/1 cat and personal development plan. He stated that he was issued an offer letter dated 19-11-2012 by the Employer. He stated that the Employer was pleased with his performance in its establishment and his compensation was revised w.e.f. 01-10-2013 by 10.2% to Rs. 8,65,081/- p.a. on the then existing payment of Rs. 7,92,230/- p.a. within a short span of 9 months from the date of joining the Employer.

3. He stated that somewhere around September, 2013, the Employer informed him that he will have to resign from its service without any rhyme or reason and further he was asked to approach a different entity/organization i.e. United Spirit Limited (USL) for taking up fresh employment and in this regard

emails were exchanged between himself and the Employer. He stated that despite the fact that he had made several requests to the Employer for an offer of employment to be issued by USL, no offer letter in respect of fresh employment proposed was being provided to him. He stated that thus, his work with the Employer was supposed to end abruptly without any sufficient cause. He stated that the Employer issued to him the notice of termination on 07-10-2013. He stated that the said termination letter was accepted under protest and without prejudice to his rights and contention on 09-10-2013.

4. Aggrieved by the decision of the Employer in terminating his employment, he raised an industrial dispute on 08-10-2013, which ended in failure. He stated that in the meantime the Employer issued a cheque dated 18-10-2013 for a sum of Rs. 2,17,752/- towards his so called full and final payment. He stated that as there was no hope of settlement, coupled with the fact that the validity of the cheque was about to expire, he finally deposited the said cheque under protest and without any prejudiced to his rights and contentions under intimation to the Employer. The Workman contended that in the circumstances his termination from service is patently illegal, mala fide, unconstitutional and against the settled principle of the prevailing law. The Workman therefore prayed for an award directing the Employer to reinstate him in service with full back wages and consequential benefits.

5. The Employer resisted the claim of the Workman by filing its written statement on 17-03-2015 at Exb. 5. The Employer, as and by way of its preliminary objections, submitted that the Party I is not a 'workman' as defined under Section 2 (s) of the I.D. Act, 1947 as he was working with them as Regional Customer Activation Manager in its sales team and that he was responsible for the State of Goa for promoting its brands in the region by planning the promotion and marketing activation. The Employer stated that as Regional Customer Activation Manager, the duties and responsibilities of Party I were to plan the profitable deployment of trade and brand investment for the region and execute the activities during the year for the including marketing and sales activation, define the execution standards for marketing and sales promotion and to ensure that activities are delivered on time, in full and on agreed budgets, work with partners, distributors, agencies, hotels, clubs and wine shops to deliver and execute planned marketing and sales activities, plan and execute for the region for all marketing visibility and point of sale material for its brands, to ensure its brands are appropriate and is optimally placed to influence shopper choice, work cross functionally

with regional sales teams, regional and national customer marketing to ensure flawless promotion and activation for its brands, to provide timely feedback and assessment of executional standards to regional and national customer marketing managers to enable course correction or address specific operational challenges in the region, capture data and create summary reports that provide a clear picture of operational and execution standards in the region, employee to work with regional customer marketing team to provide timely information relating to regional execution plans, consistently learns and role models Diageo values both internally and externally to Diageo Customers i.e. distributor, agencies, hotels, clubs and wine shops, be the Ambassador of its code of business conduct and executes activities in line with its marketing code. The Employer stated that he was informed that he is representing the Employer at all times, dress, language and conduct should be professional and appropriate at all times and that business appropriate dress should be worn when out in trade (business shirts and trousers for men). The nature of operations which are essentially, predominantly/exclusively are in the domain of customer relationship/marketing/sales, does not fall within the first part of the definition of the 'workman' and hence the reference is not maintainable and deserves to be rejected at the threshold.

6. The Employer stated that it is engaged in the business of manufacturing, importing, marketing and selling alcoholic beverages and is an indirect subsidiary of Diageo PLC (Public Limited Company), United Kingdom. The Employer stated that the remuneration of the Party I was increased considering his additional responsibilities in the area of sales promotion with them. The Employer stated that Diageo PLC recently has recently invested in USL. The Employer stated that Diageo PLC is the single largest shareholder of USL and has acquired management control of USL. The Employer stated that USL is the market leader in India being pioneer and expertise in sales, marketing, activation and distribution network and having market share of 59% whereas it has total 350 employees with 1% of the market share. The Employer stated that in order to achieve synergy between the organizations, effective 01-10-2013 it has appointed USL as their sale agent. The Employer stated that after appointing USL as Sales Agent, they didn't have sale/commercial team in order to provide jobs to its sales. The Employer stated that they integrated its sales/commercial team with USL. The Employer stated that it had made this announcement on 21st August, 2013 declaring same to be effective from 01-10-2013.

The Employer stated that since no sales jobs were available, they didn't have any option but to terminate the contract of their employees. The Employer stated that however, in order to provide the employment to its employees despite they not having jobs for its employees, they provided an option for getting a job for its employees in USL. The Employer stated that this was followed by one to one discussions with the Party I through its functional head, Kiran Nithyanand. The Employer stated that during the discussions this change was explained to the Party I in further details and was intimated that effective 1st October, 2013, the commercial team in Diageo India will transition to USL. The Employer stated that the Party I was informed that the opportunities and the role in USL would be shared to him in due course of time. The Employer stated that on 05-09-2013, the Party I was invited to participate in the "Off Trade Road Show" anchored by the USL and its Leaders in Mumbai, where the USL Organization was introduced in details to all employees present. The Employer stated that thereafter a meeting was organized in Mumbai, on 12th September, 2013 between the Party I and the sales leader of West Regional Profit Centre (RPC), USL for a one to one interaction to know him better. The Employer stated that its Regional Business Manager and Human Resources Business partner interacted with the Party I on 20th September, 2013 at its Pune office where the opportunity for Senior Territory Sales Executive within the cross segment based out of Goa was discussed with him. The Employer stated that in the said discussions, the details on his compensation structure and Human Resource and other employee related policies of USL, joining process were also shared. The Employer stated that the Party I was also handed over a kit which contained a comparative statement of his current and USL compensation structure, domestic travel policy of USL, frequently ask questions for employees and the joining process. The Employer stated that, at the close of the discussions, the Party I mentioned that he would think about the opportunity and revert to them on the same within the timelines specified in the joining process document. The Employer stated that the position offered to him in the USL was same as the position and level he holds in the company, with same salary and perks. The Employer stated that the name of the designation was different as USL has different nomenclature of designation for similar positions. The Employer stated that on 24th September, 2013, they followed up with him on his decision to accept or reject the offer discussed with him, which he sent them an email on 25th September, 2013 stating that he wanted more details on the offer.

The Employer stated that the Party I specifically asked for a draft of the USL offer letter with details on the role, grade and compensation. The Employer stated that Mr. Satyam Arora spoke with the Party I on phone and explained to him that this was the process being followed for all employees and that once he states his interests in the offer a formal process of appointment would follow. The Employer stated that he was also told by Kiran on email that they could connect him with the USL Human Resource Team for any queries that he may have on the offer terms. The Employer stated that the Party I refused to talk to USL Human Resource Team and wanted a draft offer letter from USL. The Employer stated that, thereafter, on 26th September, 2013, its function Head Mr. Kiran Nithyanand called him several times to connect with him. The Employer stated that then Satyam and Kiran had a telephonic discussion with him, after that, Kiran emailed him a scanned copy of a letter which once again outlines all the details (role, location, designation and salary) that he had requested for. The Employer stated that they also explained to him that as per the process being followed, once he has expressed his interest in the USL role, a formal letter of appointment will be issued to him by USL. The Employer stated that however, he once again mailed them on 27th September, 2013 and conveyed that he was not satisfied with the details provided so far and he still could not make up his mind. The Employer stated that while the time line to accept the offer ended on 27th September, 2013, they extended this time line for him. The Employer stated that on 30th September, 2013, he again informed them that he is unable to take decision. The Employer stated that Shilpi (Human Resource Business Partner) reached out to him once again on 1st October, 2013 to request him for his decision on the offer. The Employer stated that, to help him arrive at a decision, she gave him the option of the offer details being emailed to him directly by USL Human Resource. The Employer stated that, however, the Party I still requested for some more time in order to consult his family on the decision. The Employer stated that on 4th October, 2013, he once again said that he was not able to make up his mind with all the information that had been provided to him so far and a details mails having the sequence of events with letter and details of his future employment was sent to him. The Employer stated that on 7th October, 2013, he replied that he is unable to make up his mind. The Employer stated that they had therefore, no option, but to terminate his employment by their letter of termination dated 7-10-2013. The Employer stated that he accepted the termination letter under protest and handed over the assets of the Company. The

Employer stated that he was offered the option of a role/position in USL, however, he refused to accept. The Employer stated that they does not have commercial/sales department and hence, no commercial/sales roles exists in the company. The Employer, therefore, submitted that his request for reinstatement on his position in the Company could not be obviously be accepted and, therefore, was rejected. The Employer denied that the termination of service of the Party I is illegal, malafide, unconstitutional and against the settled principles of prevailing law and prayed for dismissal of the present reference.

7. Thereafter, the Party I filed its Rejoinder on 27-4-2015 at Exb. 6. The Party I, by way of his rejoinder, reiterates all the submissions and averments made by him in his claim statement to be true and correct and denies all the statements and averments made by the Employer in its written statement, which are contrary and inconsistent with the statements and averments made by him.

8. Based on the pleadings filed by both the parties, this Court framed the following issues on 4-8-2015 at Exb. 8

1. Whether the Workman/Party I proves that he is a Workman as defined u/s 2(s) of the I.D. Act, 1947?
2. Whether the Workman/Party I proves that action of the Employer/Party II in terminating his services w.e.f. 07-10-2013 is illegal and unjustified?
3. Whether the Workman/Party-I is entitled to any relief?
4. What order? What Award?

9. My answers to the aforesaid issues are as follows:

- | | | |
|----------------|---|---------------------|
| 1. Issue No. 1 | : | In the negative. |
| 2. Issue No. 2 | : | Does not arise. |
| 3. Issue No. 3 | : | In the negative. |
| 4. Issue No. 4 | : | As per Final Order. |

REASONS

I have heard the oral arguments of Ld. Adv. Shri V. Pangam appearing for the Party I as well as Ld. Adv. Shri G. K. Sardesai for the Employer.

10. Ld. Adv. Shri V. Pangam, representing the Party I, during the course of his oral arguments, submitted that the party I was working as a Customer Activation Manager being based at Goa w.e.f. 13-12-2012. He submitted that the Employer is involved in the business of manufacturing, importing, marketing and selling of Alcoholic Beverages in India. He submitted that the

Employer, after going through his curriculum vitae, painted to him a rosy picture for taking up employment with them with handsome remuneration around 46,200/- p.m. in addition to other allowances based on the Sales performance and had also assured future better prospects. He submitted that as a Customer Activation Manager for the State of Goa and South Maharashtra with the Employer, the Party I work profile was execution of regional activity calendar to agreed scale delivering on time, in full and within budget, track and control execution standards ensuring clear visibility of performance and operational effectiveness, manage agencies that support delivery of world class execution, region value/volume growth, ensure world class execution to agreed scale, within the budgets and on time for all planned activities, profitable deployment of trade and brand investment within the region, execution of region specific calendar, always aligned to the national activity calendar ensure, strong relationship with third party agencies and customers to drive flawless execution and complete annual P4G/I cat and personal development plan. He submitted that the Employer was pleased with his performance in its establishment and his compensation was revised w.e.f. 1-10-2013 by 10.2% to Rs. 8,65,081/- per annum from its existing payment of Rs. 7,92,230/- per annum within a short span of 9 months from the date of joining. He submitted that he was performing the supervisory nature of duties and as such he is a workman within the meaning of Sec. 2(s) of the I. D. Act, 1947. He submitted that the Employer issued to him a notice of termination on 7-10-2013 without any notice which was accepted by him under protest and without prejudice to his rights and contentions. He submitted that the sudden termination of his service w.e.f. 7-10-2013, is illegal, arbitrary, unconstitutional and in violation of the principles of natural justice. He submitted that he is unemployed after termination of his service. He submitted that the party I be reinstated in service with full back wages and other consequential benefits attached to the post. In support of his oral contention he relied upon two judgments of Hon'ble Supreme Court of India, (1) in the case of **K C Sharma V/s Delhi Stock Exchange reported in 2005 AIR (SC) 2884** and (2) in the case of **Workmen of American Express V/s Management of American Express reported in AIR 1986 SC 458**.

11. Per contra, Ld. Adv. Shri G. K. Sardesai, representing the Employer during the course of his oral arguments submitted that, the party I was appointed as Customer Activation Manager for Goa and South Maharashtra w.e.f. 13-12-2012. He

submitted that the Party I was lastly paid remuneration of Rs. 8,65,081/- p.a. He submitted that the Employer, in its written statement pleaded certain duties of the Party I which he was performing as an Customer Activation Manager. He submitted that the Party I did not deny the said duties and responsibilities as spelt out by the Employer in its written statement filed in the present proceedings. He submitted that the duties and responsibilities attached to the post of Customer Activation Manager, which the Party I was performing were managerial, administrative and supervisory in nature. He submitted that taking into consideration the predominant nature of duties and responsibilities attached to the post of Customer Activation Manager which the Party I was performing, he is not a 'workman' as defined u/s 2 (s) of the I.D. Act, 1947. He submitted that even otherwise, the Sales Promotion Act is applicable only to pharmaceutical companies and not applicable to the Employer Company and as such the Party I is not entitled to any benefit from the said Sales Promotion Act so as to invite jurisdiction of this Hon'ble Court. In support of his oral contentions, he relied upon the following judgments of Hon'ble Supreme Court of India.

- (a) In the case of **H. R. Adyanthaya and Ors. v/s. Sandoz (India) Ltd. and Ors., reported in (1994) 5 SCC 737.**
- (b) In the case of **Mukesh K. Tripathy v/s. Sr. Divisional Manager, L.I.C. and Ors., reported in (2004) 8 SCC 387.**
- (c) In the case of **T.P. Srivastava v/s. National Tobacco Co. of India Ltd., reported in (1992) 1 SCC 281.**
- (d) In the case of **Burmah Shell Oil Storage and Distributing Co. of India Ltd. V/s The Burmah Shell Management Staff Association (I.D. Act 545), reported in 1971 A.I.R. S.C. 922.**

He also relied upon a judgment in the case of **Standard Chartered Bank v/s. Vandana Joshi and Anr., reported in 2010 1 CLR 163** of the Hon'ble High Court of Bombay.

I have carefully perused the entire records of the present case. I have also carefully considered the oral submissions advanced by the Ld. Advocates appearing for the respective parties and is of the considered opinion as under.

12. *Issue No.1:* The Employer denied the contention of the Party I that he is a 'workman' as defined u/s 2 (s) of the I.D. Act, 1947. The burden to prove that he is a 'workman' within the meaning of Section 2 (s) of the I.D. Act, 1947, is therefore squarely lies on the Party I.

Section 2 (s) of the I.D. Act, 1947 defines the term 'workman' and it means "*any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be expressed or implied and for the purposes of any proceedings under this act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with or a consequence of that dispute or dismissal, discharge or retrenchment has led to that dispute, but does not include any such person:*

- (1) *who is subject to the AIR Force Act, 1950 (45 of 1950) or the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or*
- (2) *who is employed in the police service or as an Officer or other employee of a prison or*
- (3) *who is employed mainly in a managerial or administrative capacity*
- (4) *who, being employed in a supervisory capacity draws wages exceeding Rs. 1,600/- per mensem or exercises either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."*

13. Thus, from the bare reading of definition of "Workman" under the I. D. Act, 1947, it is clear that in order to prove the concerned employee is a 'Workman' or not within the meaning of the said act, he/she must prove that he/she was employed in an 'Industry' as defined under the said Act and secondly he/she was employed to perform any of the work such as to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward and that it is not sufficient to prove that the concerned employee was not falling in any of the exceptional category i.e. administrative, managerial and/or supervisory in nature and drawing a salary of more than Rs. 7,500/- p.m.

14. In the case of **Burmah Shell Oil Storage and Distribution Co. of India Ltd. (supra)**, the Hon'ble Supreme Court of India has held that "**for an employee to be workman under the definition of workman in Section 2 (s) of the Act, it is manifest that he must be employed to do skilled or unskilled, manual work, supervisory work, technical work or clerical work. If the work done by an employee is not of such a nature, he would not be a workman**".

15. In the case of **T. P. Srivastava v/s. National Tobacco Co. (I) Ltd., reported in 1992 (1) LLN 13**, the Hon'ble Supreme Court of India has held as under:

*"In order to come within the definition of workman under the Industrial Disputes Act as it stood in the year 1973 when the appellant's service was terminated, the employee has to be under the employment to do the work of one of the types of work referred to in the section, i.e., manual, skilled and/or clerical in nature. The finding of the Tribunal on the nature of the work is a finding on a question of fact and it is also borne out by the document produced before Labour Court. It is seen from the facts found that the appellant was employed to do canvassing and promoting sales for the company. The duties involve the suggesting of ways and means to improve the sales, a study of the type or status of the public to whom the product has to reach and a study of the market condition. He was also required to suggest about the publicity in markets and melas, advertisements including the need for posters, holders and cinema slides. These duties do require the imaginative and creative mind which could not be termed as either manual, skilled, unskilled or clerical in nature. The supervising work of the other local salesman was part of his work considered by the Tribunal as only incidental to his main work of canvassing and promotion in the area of his operation. Such a person cannot be termed as a workman is also the ratio of the decision of this Court in *Burmah Shell Oil Storage and Distribution Company v/s. Burmah Shell Management and Staff* reported in A.I.R. 1971 S. C. 922, *D. S. Nagaraj v/s. Labour Officer, Kurnool, and others*, 1973 – I L.L. N 161, *J. J. Deehane Distributor v/s. State of Kerela and others* 1975 – II L.L.N 353".*

16. In the case of **S. K. Maini v/s. M/s. Carona Sahu Co. Ltd. and Ors., [1994 (68) FLR 1101]**, the Hon'ble Apex Court observed that "whether or not an employee is a 'workman' under Sec. 2(s) of the Industrial Disputes Act is required to be determined with reference to his principal nature of duties and functions. Such question is required to be determined with reference to the facts and circumstances of the case and materials on record and it is not possible to lay down any strait-jacket formula which can decide the dispute as to the real nature of duties and functions being performed by an employee in all cases. When an employee is employed to do the types of work enumerated in the definition of the workman under Section 2 (s), there is hardly any difficulty in treating

him as a workman under the appropriate classification but in the complexity of industrial or commercial organizations quite a large number of employees are often required to do more than one kind of work. In such cases, it becomes necessary to determine under which classification the employee is not of much importance and what is important is the nature of duties being performed by the employees. The determinative factor is the main duties of the concerned employee and not some works incidentally done. In other words, that is, in substance, the work which employee does or what in substance he is employed to do. Viewed from this angle, if the employee is mainly doing supervisory work but incidentally or for a fraction of time also does some manual or clerical work, the employee should be held to be doing supervisory works. Conversely, if the main work is of manual, clerical or of technical nature, the mere fact that some supervisory or other work is also done by the employee incidentally or only a small fraction of working time is devoted to some supervisory works, the employee will come within the purview of workman as defined in Section 2 (s) of the Industrial Disputes Act, 1947".

17. In the case of **H.R. Adyanthaya (supra)**, the Hon'ble Supreme Court of India in para 24 of its judgment held as under:

*"24. We thus have three three-Judge Bench decisions which have taken the view that a person to be qualified to be a workman must be doing the work which falls in any of the four categories, viz. manual, clerical, supervisory or technical and two two-Judge Bench decisions which have by referring to one or the other of the said three decisions have reiterated the said law. As against this, we have three three-Judge Bench decisions which have without referring to the decisions in *May and Baker*, *WIMCO* and *Burmah Shell* cases have taken the other view which was expressly negative, viz., if a person does not fall within the four exceptions to the said definition he is a workman within the meaning of the I. D. Act. These decisions are also based on the facts found in those cases. They have, therefore, to be confined to those facts. Hence the position in law as it obtains today is that a person to be a workman under the ID Act must be employed to do the work of any of the categories, viz., manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions to the definition. We reiterate the said interpretation."*

18. In the case of **Mukesh K. Tripathi V/s LIC** reported in (2004) 8 SCC 387, before the Hon'ble Supreme Court of India, *"the Petitioner was appointed as 'Apprentice Development Officer' with the Respondent and his services were terminated in terms of Clause IV of his Appointment Order. The Tribunal held him as "Workman" within the meaning of Sec. 2 (s) of the I. D. Act, 1947. In Writ Petition filed by the Respondent before the Hon'ble Allahabad High Court, the said Award passed by the Industrial Tribunal was set aside. In an Appeal filed by the Appellant before the Hon'ble Apex Court after relying upon its various decisions dismissed the said appeal and observed that it does not appear that the Appellant here in had adduced any evidence whatsoever as regards the nature of his duties so as to establish that he had performed any skilled, unskilled, manual, technical or operational duties"*.

19. In the case of **Standard Chartered Bank v/s. Vandana Joshi and Anr., reported in 2010 LLR 200**, the Hon'ble High Court of Bombay also explained the meaning of the term 'Manager' in para 18 of its judgment as under and held that the Respondent is not a 'workman' within the meaning of Section 2 (s) of the I.D. Act, 1947.

"The fact that in an organization structure the employee, in the course of the decision making process, is subject to checks and balances is not a matter which would establish that she/he is a workman within the meaning of Section 2(s). Modern forms of business in corporate organizations put into place a carefully crafted process of checks and balances. Rarely, if ever, would an employee have authoritarian control over business decisions. Employee are made subject to verification or subject to a system of controls and balances does not establish that the employee is a workman within the meaning of Section 2(s). Managers do not become workmen because their decisions are structured by process and approvals. Absolute autonomy is not the norm in managerial decision making. Nor does the law insist on absolute discretion or absolute autonomy for a person to be a manager. Basically the answer to the question must depend upon the dominant nature of the duties and responsibilities".

20. Thus, from the aforesaid series of judgments of Hon'ble Apex Court as well as Hon'ble High Court of Bombay, it is now well established that whether a concerned employee is a 'workman' or not under the I.D. Act, 1947, depends upon his predominant nature

of duties and responsibilities, which he was performing just before the termination of his services. It is further well settled principle of industrial jurisprudence that in order to become a 'workman' under the I.D. Act, 1947, the concerned employee shall prove that he must be employed to do the work either manual, skilled or unskilled, clerical, technical, operational or supervisory in nature and it is not enough that he was not doing any administrative, managerial and /or supervisory work. Among the aforesaid judgments, the law laid down by the Hon'ble Apex Court in the case of **T.P. Srivastava (supra)** is squarely applicable to the case in hand.

21. Reverting to the facts of the present case, the records indicate that the Party I was designated as 'Customer Activation Manager' and his remuneration at the time of termination of his services was Rs. 8,65,081/- p. a. i.e. approximately Rs. 72,090/- p.m. As a 'Customer Activation Manager' for the State of Goa and South Maharashtra, his predominant nature of duties and responsibilities were execution of regional activity calendar to agreed scale delivering on time, in full and within budget, track and control execution standards ensuring clear visibility of performance and operational effectiveness, manage agencies that support delivery of world class execution, region value/volume grow, ensure world class execution to agreed scale, within budgets and on time for all planned activities, profitable deployment of trade and brand investment within the region, execution or region specific calendar, always aligned to the national activity calendar, ensure strong relationship with third party agencies and customer to drive flawless execution, complete annual P4G/1 cat and personal development plan. The aforesaid duties and responsibilities performed by the Party I as an 'Customer Activation Manager' do require the imaginative and creative mind which could not be termed as manual, skilled, unskilled, technical, operational or clerical, but squarely falls in a managerial, administrative and supervisory in nature. Ld. Adv. Shri V. Pangam during the course of his oral arguments and cited upon a judgments in the case of **K. C. Sharma(supra)** as well as in the case of **Workman of American Express (supra)**. However, the principle laid down in both the said judgments are not applicable to the case in hand.

22. The Party I was working in sales and marketing department of the Employer. However, the provisions of Sales Promotions Employees' (Conditions of Service) Act, 1976 are applicable to pharmaceutical Companies only and not to the Employer Company and as such the provisions of the said Act are not

applicable to the Party I. In view of above, it is held that the Party I is not a 'workman' within the meaning of Section 2 (s) of the I.D. Act, 1947. The issue No. 1 is therefore answered in the negative.

23. Issue No. 2 and 3:

While deciding the issue No. 1 hereinabove, I have discussed and come to the conclusion that the Party I is not a 'workman' within the meaning of Section 2 (s) of the I.D. Act, 1947.

In the circumstances, this court has no jurisdiction to decide whether the action of the Employer in terminating services of the Party I with effect from 07-10-2013, is legal and justified. The Party I is therefore not entitled to any relief. The issue No. 2 is therefore answered accordingly and the issue No. 3 is answered in the negative.

In view of the above discussions, I proceed to pass the following Order:

ORDER

1. It is held that the action the Party I Shri Gautam Gauns is not a 'workman' within the meaning of Section 2 (s) of the I.D. Act, 1947.
2. It is further held that the dispute as to whether the action of the management of M/s Diageo India Private Limited, Mumbai in terminating services of Shri Gautam Gauns, Customer Activation Manager, with effect from 07th October, 2013, is legal and justified, does not survive.
3. The Party I, Shri Gautam Gauns is not entitled to any relief.
4. No Order as to Costs.

Inform the Government accordingly.

Sd/-
(Suresh N. Narulkar),
Presiding Officer
Labour Court-II.

Notification

No. 28/3/2018-LAB/645

The following award passed by the Labour Court-II, at Panaji-Goa on 24-07-2018 in reference No. LC-II/C-IT/02/2017 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

A. S. Mahatme, Under Secretary (Labour).
Porvorim, 24th September, 2018.

LABOUR COURT-II
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Suresh N. Narulkar, Hon'ble
Presiding Officer)

Case No. Ref. LC-II/C-IT/02/2017

Shri Vinayak Kolhe,
Conductor, Badge No. 4873,
Vasco Depot, KTC Ltd. Workman/Party I
V/s

M/s. Kadamba Transport Corporation Ltd.,
Paraisa-de-Goa,
Alto-Porvorim-Goa Employer/Party II

Workman/Party I represented by Adv. Shri A. Kundaikar.

Employer/Party II represented by Adv. Shri P. Agarwal.

Panaji, dated 24-07-2018.

AWARD

1. This award shall disposed off the Complaint dated 29-11-2016 filed by the Workman u/s 33-A of the I. D. Act, 1947.

2. It is the case of the Workman in short that he is working as conductor and is presently posted at Vasco depot. He stated that he raised the dispute in respect of disparity in his pay fixation before the Asstt. Labour Commissioner, Panaji, Goa, which ended in failure. He stated that accordingly failure report was sent to the Appropriate Government. He stated that the Appropriate Government in exercise of the power conferred by Clause 10 (1) (d) of the I.D. Act referred the said dispute for its adjudication to this Labour Court II. He stated that the said dispute referred by the Appropriate Government is pertaining to legality and justifiability of the action of the Employer in not granting second financial up gradation under the Modified Assured Career Progression Scheme (MACPS) to him. He stated that the said reference was registered as LC-II/IT/08/15 and notice was issued to the parties. He stated that in pursuance to the notice issued to the parties, they have appeared and filed their pleadings respectively. He stated that during the pendency of the said reference before this Hon'ble court, the Personnel Manager of the Employer issued an order dated 18-11-2016 by which he was recommended for grant of second financial up gradation in the pay band of Rs. 5200-20200+2800 grade pay under the MACPS. He stated that by the said order his basic was fixed at Rs. 9,750/- plus Rs. 2,800/- grade pay

w.e.f. 01-09-2008 notionally and monetary benefits from 20-09-2016. He stated that the said order further states that on implementation of the MACPS, the arrears will be paid w.e.f. 20-09-2016 only after receipt of funds from the Government. He stated that the said order was passed when the dispute pertaining to the non-granting of the second financial up gradation was pending before this Labour Court II. He submitted that he is entitled for up gradation in accordance with the MACPS and as such the Personnel Manager of the Employer has no right of whatsoever nature to breach the scheme and implement the same with the condition that he shall be entitled notionally from 01-09-2008 and monetary benefits from 20-09-2016. He submitted that the said order passed by the Personnel Manager is illegal and without any authority. He submitted that the said order alter the service conditions applicable to him and as such prejudiced him. He submitted that the Personnel Manager of the Employer has acted in abuse of process of law and is liable for action for violation of provisions of Section 33-A of the I.D. Act. The Workman therefore prayed for allowing the complaint. The Workman further prayed that the Employer be directed to implement the second financial up gradation on completion of 20 years of service monetarily with consequential benefits attached to the post from the date of eligibility of the scheme and that to initiate proceedings against the Personnel Manager of the Employer for altering the service conditions in violation of the MACPS during the pendency of the dispute before this Labour Court II.

3. The Employer resisted the claim of the Workman by filing its reply dated 05-04-2017 at Exb. 6. The Employer, as and by way of its preliminary objections, submitted that the complaint is liable to be dismissed as there is no alteration of service conditions as alleged by the Workman and that what is referred for adjudication is not a complaint as defined u/s 33-A of the I.D. Act.

4. The Employer stated that it is a Government Company registered under Section 617 of the Companies Act, 1956. The Employer stated that it is a State transport undertaking under the purview of the Motor Transport Act, 1988. The Employer admitted that the Workman is working as 'conductor' in its service. The Employer admitted that the dispute in a reference bearing No. IT/08/15 was raised by the General Secretary, Kadamba Kamgar Union vide its letter dated 14-08-2014 regarding non-implementation of 2nd up-gradation under the MACP Scheme to the Workman by them. The Employer stated that the matter was referred for

conciliation which ended in failure on 11-12-2014. The Employer stated that as per para 15 of the said MACP Scheme if the financial up-gradation under MACP Scheme is deferred and not allowed after 10 years in a grade pay, due to the reasons of the employee being unfit or due to the departmental proceedings etc. this would have consequential effect on the subsequent financial up-gradation which would also differed to the extent of delay in the first financial up-gradation. The Employer stated that there were three departmental enquiries pending against the Workman, one vide charge-sheet No. 127 dated 18-05-1996, second charge-sheet No. 789 dated 28-08-2001 and third charge-sheet No. 158 dated 26-04-2007. The Employer stated that the MACP Schemes are given in the circular dated 27-11-2012, wherein the eligibility for granting MACP is considered. The Employer stated that since the enquiries in all the aforesaid charge-sheets were pending against the Workman, financial up-gradation in the scale was differed by them. The Employer stated that the dispute raised by the Workman was ought not to be raised before the Labour Commissioner as he had to exhaust all the remedies available to him and thereafter approach the authorities under the Act and as such the Workman is not entitled to any relief. The Employer stated that on completion of the enquiry into the charge-sheet No. 127 dated 18-05-1996, order dated 11-04-2016 was issued to the Workman imposing a penalty of Rs. 2500/-. The Employer stated that similarly on completion of enquiry into the charge-sheet No. 789 dated 28-08-2001, an order dated 10-05-2016 was issued imposing a fine of Rs. 2000/- and into the charge-sheet No. 158 dated 26-04-2007, an order dated 20-09-2016 was issued imposing a penalty by way of fine of Rs. 2000/-. The Employer stated that after the disposing off the departmental enquiries against the Workman his case for second financial up-gradation in the MACP was placed before the departmental screening committee and the departmental screening committee was pleased to recommend the Workman for grant of second financial up-gradation and accordingly an order dated 18-11-2016 was issued to him. The Employer submitted that issuance of order dated 18-11-2016, thereby granting benefits to the Workman does not amounts to alteration of his service conditions to the prejudice of the Workman. The Employer therefore submitted that the Workman is therefore not entitled to any relief as claimed in the complaint and the complaint is liable to be dismissed as not maintainable. The Employer denied the overall case as pleaded by the Workman and prayed for dismissal of the present complaint.

5. Thereafter an opportunity was given to the Workman to file his rejoinder to the written statement filed by the Employer. However, Ld. Adv. Shri A. Kundaikar representing the Workman submitted that he does not wish to file any re-joinder.

6. Based on the pleadings filed by the respective parties' hereinabove, this Labour Court II framed the following issues on 24-07-2017 at Exb.7.

1. Whether the Workman/Party I proves that the order dated 18-11-2016 passed by the Personnel Manager of the Employer thereby recommending the grant of second financial up gradation under the MACP Scheme to him during the pendency of the reference bearing No. LC-II/IT/08/15 before the Labour Court II is illegal?
2. Whether the Workman/Party I proves that by passing an order dated 18-11-2016, the Employer altered his service conditions?
3. Whether the Employer/Party II proves that the present complaint filed by the Workman is liable to be dismissed in view of the reasons stated in para 2 (a) and (b) as well as para 10 of its written statement?
4. Whether the Workman/Party I is entitled to any relief?
5. What order? What Award?

7. My answers to the aforesaid issues are as under:

- | | | |
|-----------------------|---|---------------------|
| (a) Issue No. 1 | : | In the Negative. |
| (b) Issue No. 2 | : | In the Affirmative. |
| (c) Issue No. 3 | : | In the Affirmative. |
| (d) Issue No. 4 and 5 | : | As per final order. |

REASONS

I have heard the oral arguments of Ld. Adv. Shri. A. Kundaikar, appearing for the Workman as well as Ld. Adv. Shri P. Agarwal, appearing for the Employer.

8. Ld. Adv. Shri. A. Kundaikar, appearing for the Workman, during the course of his oral arguments submitted that the Workman is working as conductor and presently posted at Vasco depot. He submitted that the Workman had raised a dispute pertaining to disparity in his pay fixation before the ALC, Panaji, Goa, which ended in failure. He submitted that pursuant to the failure report submitted to the Appropriate Government, it has issued a reference u/s 10 (1) (d) of the I.D. Act, 1947 for its adjudication to the Labour Court II. He submitted that after receipt of the reference, the Labour Court II registered the said reference as LC-II/IT/08/15 and due notice was issued to the

parties. He submitted that pursuant to the notice issued to them, the Employer filed its written statement duly verified by its managing director. He submitted that during the pendency of the aforesaid reference, the Personnel Manager of the Employer issued an order dated 18-11-2016, by which the Workman was granted second up-gradation in the pay band of Rs. 5200-20200+2800 grade pay under the MACP Scheme and his pay was fixed at Rs. 9750+Rs. 2800/- grade pay w.e.f. 01-09-2008 notionally and monetary benefits from 20-09-2016. He submitted that by passing an order dated 18-11-2016, the Employer violated the service conditions as stated in Section 33 of the I.D. Act, 1947. He submitted that the law laid down by the Hon'ble High Court of Kerela in its judgment in the case of **Stanley Mendex v/s. Glovanola Binny and Ors., reported in (1968) III LLJ 470 Ker** is erroneous and has been set aside by the Hon'ble Apex Court in its case of **Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v/s. Shri Ram Gopal Sharma and Ors., reported in AIR 2002 SC 643**. He therefore submitted that the complaint be therefore be allowed and necessary action deemed fit be taken against the Employer.

9. Per contra, Ld. Adv. Shri P. Agarwal, representing the Employer, during the course of his oral arguments submitted that it is not in dispute that the Workman is working as conductor and presently posted at Vasco depot. He admitted that the Workman had raised a dispute pertaining to disparity in his pay fixation before the ALC, Panaji, Goa, which ended in failure. He admitted that the Appropriate Government had issued a reference for its adjudication to this Labour Court II in exercise of its power u/s 10 (1) (d) of the I.D. Act, 1947. He submitted that based upon the said reference, this court registered the said reference as case No. LC-II/IT/08/15 and notice was issued to the parties. He submitted that pursuant to the aforesaid notice, the Employer also filed its written statement. He submitted that pending the aforesaid reference, the Employer was pleased to grant second financial up-gradation under the MACP scheme to the Workman. He submitted that the second financial up-gradation under the MACP scheme was deferred to the Workman on account of three departmental enquiries pending against him. He submitted that after disposing off the said three departmental enquiries, the case of the Workman was placed before its departmental screening committee, who in turn pleased to recommend the Workman for grant of second up-gradation and accordingly, order dated 18-11-2016 was issued to him. He submitted that by issuing order dated 18-11-2016, the basic pay of the

Workman was increased and fixed at Rs. 5200-20200+Rs. 2800/- grade pay w.e.f. 01-09-2008 notionally and monetary benefits from 20-09-2016. He submitted that the Workman had already availed an arrears accrued towards the second financial up-gradation under the MACP Scheme. He therefore submitted that granting the second financial up-gradation to the Workman under the MACP Scheme does not prejudicial altering the conditions of service of the Workman. He therefore submitted that the complaint filed by the Workman be dismissed with heavy cost.

I have carefully perused the entire records of the present case. I have also carefully considered the oral arguments advanced by the Ld. Advocates appearing for the respective parties and is of the firm opinion as under.

10. *Issue No.1 and 2:*

Undisputedly, the Workman is in the employment of the Employer and has been posted at Vasco depot. The Workman raised a dispute pertaining to the disparity in his pay fixation before the Asstt. Labour Commissioner, Panaji, Goa, which ended in failure. The failure report was submitted to the Appropriate Government. The Appropriate Government issued a reference to this Labour Court II for its adjudication in exercise of the powers conferred by Section 10 (1) (d) of the I.D. Act, 1947. After receipt of the aforesaid reference, this court registered the said reference as case No. LC-II/IT/08/15 and notice was issued to the parties. In pursuance to the notice issued to the parties, the Employer appeared before the court and filed its written statement on 22-02-2016. Pending the aforesaid reference for its adjudication, the Personnel Manager of the Employer issued an order dated 18-11-2016 by which the Workman was granted second financial up-gradation under the MACP Scheme on completion of 20 years in the service w.e.f. 01-09-2008 and the basic pay of the Workman was fixed at Rs. 5200-20200+Rs. 2800/- grade pay. The basic pay of the Workman is fixed at Rs. 9750/- plus Rs. 2800/- grade pay w.e.f. 01-09-2008 notionally and monetary benefits from 20-09-2016. The Workman accepted the said order without any protest and has also availed the arrears accrued therefrom.

11. By the present complaint, the Workman claims to be in violation of Section 33-A of the I.D. Act, 1947 by the Employer by issuing the said order dated 18-11-2016 thereby granting him MACP Scheme. The pre-condition for the grant of the Section 33-A of the said Act is that the Workman shall prove that the Employer has contravened Section 33 of the said Act. Section 33 (1) of the said Act states that during the

pendency of any conciliation proceedings before the Conciliation Officer or a board of any proceedings before (an arbitrator or) a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall—

- (a) In regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings or
- (b) For any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute,

Save with the express permission in writing of the authority before which the proceeding is pending.

12. In the case of **Stanley Mendex v/s. Glovanola Binny Ltd. and Ors., reported in (1968) II LLJ 470**, the Hon'ble High Court of Kerela in para 5 of its judgment has held as under:

"5. In a complaint made to the tribunal under Section 33A, the primary question that falls to be considered by tribunal is whether there has been a contravention by the employer of the provisions of Section 33 of the Act, and it is only in case it is found that there has, in fact, been such contravention that occasion arises for the tribunal to embark upon a further adjudication of the complaint on its merits; in other words, the tribunal has to be satisfied initially that there has, in fact, been a contravention by the employer of the provisions of Section 33 by effecting during the pendency of other proceedings before it, an alteration to the prejudice of the Workman concerned, of the conditions of his service which were applicable to him immediately before the commencement of such proceedings".

13. The principle laid down by the Hon'ble High Court of Kerala is well established and also applicable to the case in hand. Applying the law laid down by the Hon'ble High Court of Kerala, in the case in hand, pending the reference bearing No. LC-II/IT/08/15, before this Labour Court II for its adjudication pertaining to the disparity in the pay fixation of the Workman, the Employer passed an order dated 18-11-2016 by which the Workman was granted second up-gradation under the MACP Scheme.

14. Shri V. D. Harmalkar, the first witness of the Employer, during the course of his cross-examination admitted that the Workman was due for his second

financial up-gradation in the MACPS on completion of 20 years in service w.e.f. 01-09-2008. He stated that the name of the Workman was recommended for his second up-gradation under MACPS in the year 2016. Shri V. Harmalkar as well as the Workman in their cross-examination respectively admitted that the Workman were issued three charge-sheets one dated 18-05-1996, second dated 28-08-2001 and third dated 26-04-2007 and enquiries were conducted against him. Both the said persons admitted that the enquiries were resulted in imposing of penalties of fine of Rs. 2500/- vide order of the Employer dated 11-04-2016 in respect of first charge-sheet dated 18-05-1996 and fine of Rs. 2000/- each in other two charge-sheets dated 28-08-2001 and dated 26-04-2007 vide order of the Employer dated 11-05-2016 and order dated 20-09-2016 respectively. It is further admitted that after completion of all the enquiries as above, the name of the Workman was recommended for MACPS and accordingly order dated 18-11-2016 was issued to him. By the said order dated 18-11-2016, the Workman was granted second up-gradation under the MACP Scheme and his pay was fixed at Rs. 5200-20200+Rs. 2800/- grade pay and his pay scale was fixed at Rs. 9750/- plus Rs. 2800/- grade pay w.e.f. 01-09-2008 notionally and monetary benefit from 20-09-2016. Further the Workman also availed the arrears accrued therefrom. In fact, the Workman was entitled for his second up-gradation under the MACPS on 01-09-2008. However, he was granted the same by order dated 18-11-2016 in view of pendency of the departmental enquiry against him. I do not find any error or mistake in the said order dated 18-11-2016 taking into consideration the penalties issued to the Workman in all the three charge-sheets issued to him. In the event if the Workman was exonerated from all the above referred three charge-sheets than the Workman would have been entitled for his second up-gradation with effect from 01-09-2008. The said order granting the second financial up-gradation to the Workman is beneficial to him and cannot be said to be prejudicial or alters his conditions of service. Even otherwise, the Workman has not accepted the said order dated 18-11-2016 under protest. In the circumstances, the order dated 18-11-2016 granting second financial up-gradation to the Workman cannot be said to be prejudicial altering his conditions of service and as such the Employer cannot be said to be contravened Section 33 of the said Act, which is the mandatory requirement of Section 33-A of the I.D. Act, 1947.

15. *Ld. Adv. Shri A. Kundaikar*, representing the Workman during the course of his oral arguments submitted that all the above referred three enquiries

conducted against the Workman were in violation of the principles of natural justice. He submitted that even the fines were also recovered in total violation of the provisions of the Payment of Wages Act. However, the court do not find any substance of merits in the aforesaid submissions as firstly, there is no pleadings on behalf of the Workman to that effect and secondly, there is nothing on record to show that the enquiry proceedings have been challenged by him in an appropriate proceedings and set aside the same. *Ld. Adv. Shri A. Kundaikar* further submitted that order dated 18-11-2016 granting MACPS to the Workman is in breach of the said scheme and also flagrant abuse of process of law. This court however, do not find any merits in the aforesaid submissions as the said order granting second up-gradation in MACPS was passed after considering the reports of all the three enquiries holding him guilty. The law relating to promotions are similar to the MACPS. In my considered opinion order dated 18-11-2016 is just fair and proper and cannot be said to be arbitrary. *Ld. Adv. Shri A. Kundaikar* relied upon a judgment of Hon'ble Apex Court in the case of **Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. (supra)**. However, the principle laid down by the Hon'ble Apex Court in its case is not on the point in issue and as such not applicable to the case in hand.

16. It is pertinent to note that the Workman had filed two similar complaints u/s 33-A of the I.D. Act, 1947 for alleged violation of service condition on one and the same ground. The first complaint was dismissed by this court judgment and order dated 06-04-2018 and the present is the second complaint.

In view of above, it is held that the Workman failed to prove that the Employer has contravened the provisions of Section 33 of the I.D. Act, 1947, pending a reference bearing No. LC-II/IT/08/15 before this Labour Court II. The issue No.1 is therefore answered in the negative and the issue No. 2 is answered in the affirmative.

17. *Issue No. 3 and 4:*

While deciding the issue No. 1 hereinabove, I have discussed and come to the conclusion that the order dated 18-11-2006 passed by the Personnel Manager of the Employer recommending grant of second financial up gradation under the MACPS of the Workman during the pendency of the reference bearing No. LC-II/IT/08/15 before the Labour Court II is just, legal and proper. Similarly, while deciding the issue No. 2 hereinabove, I have discussed and come to the conclusion that by passing an order dated 18-11-2016, the Employer has not altered the service conditions applicable to the

Workman nor contravene the provisions of Section 33 of the I.D. Act, 1947. Hence, it is held that the Employer proved that the complaint filed by the Workman without there being an alteration of service conditions applicable to him. The issue No. 3 is therefore answered in the affirmative. The Workman is therefore not entitled to any relief. The issue No. 4 is answered in the negative.

In view of the above, I proceed to pass the following order.

ORDER

1. The complaint filed by the Workman is hereby dismissed. It is held that the second financial up gradation granted to the Workman vide order of the Employer dated 18-11-2016 is just and legal.
2. The Workman is therefore not entitled to any relief.
3. No Order as to Cost.

Inform the Government accordingly.

Sd/-
(Suresh N. Narulkar),
Presiding Officer,
Labour Court-II.

Inspectorate of Factories & Boilers

Notice

No. IFB/BAE/2018

The Board of Examiners under the Boiler Attendant's Rules, 2011 declares the following candidates to have passed in the examination conducted on 4th & 5th October, 2018 for certificate of Competency of Boiler Attendants of class mentioned in Column 3 of the Schedule below against their respective names:-

Sr. No.	Name of the candidates	Examination
1	2	3
1.	Shri Akhil Bhikaji Naik	Second Class Boiler Attendant.
2.	Shri Mithun Harichandra Gawas	Second Class Boiler Attendant
3.	Shri Mayuresh Madhukar Sinari	Second Class Boiler Attendant.
4.	Shri Sunil Kashinath Kavlekar	Second Class Boiler Attendant.
5.	Shri Mohan D.	Second Class Boiler Attendant.
6.	Shri Shantaprasad Utagi	Second Class Boiler Attendant.

1	2	3
7.	Shri Amol Narayan Morajkar	First Class Boiler Attendant.
8.	Shri Hari Om Ojha	First Class Boiler Attendant.
9.	Shri J. Bala Mahendran	First Class Boiler Attendant.
10.	Shri Borra Naga Babu	First Class Boiler Attendant.
11.	Shri Bishnu Charan Das	First Class Boiler Attendant.
12.	Shri Amir Sahadev Venji	First Class Boiler Attendant.

R. T. Korgaonkar, Inspector of Boilers & Secretary, Board of Examiners under the Boiler Attendants, Rules, 2011.

Panaji, 10th October, 2018.

Department of Personnel

Order

No. 22/10/2018-PER/2507

The Governor of Goa is pleased to allot the charge of Commandant 1st, 2nd & 3rd IRBn to Shri Utkrisht Prasoon, IPS, SP (SB), in addition to his own duties with immediate effect, in public interest.

By order and in the name of the Governor of Goa.

Shashank V. Thakur, Under Secretary (Personnel-II).
Porvorim, 10th October, 2018.

Order

No. 7/21/2017-PER/2476

Read: Notification No. 7/21/2017-PER/2093 dated 02-07-2018.

The Governor of Goa is pleased to appoint Shri Chokha Ram Garg, IAS (AGMUT:2008), as Secretary to Government, with immediate effect and shall hold the charge of following Departments, namely:-

1. Women & Child Development.
2. Craftsmen Training & Skill Development.
3. Law, Judiciary & Legislative Affairs.

The notification in the preamble stands modified to that extent.

By order and in the name of the Governor of Goa.

Harish N. Adconkar, Under Secretary (Personnel-I).
Porvorim, 9th October, 2018.

Order

No. 6/8/2016-PER/2521

Read: 1) Order No. 6/4/2001-PER (Vol. I) dated 27-01-2016.

2) O. M. No. 12/14/89-PER (Part) dated 12-08-2014.

The Governor of Goa is pleased to extend the period of probation under sub-rule (2) of Rule 22 of the Goa Civil Service Rules, 2016, of the following Junior Scale Officers appointed vide order read in preamble at Sr. No. (1) for a period of six months from the date of culmination of period of probation, as mentioned in column 3 against their name, read with guidelines laid down vide O.M. cited at Sr. No. (2) of the preamble:

Sr. No.	Name of the Officer	Date of joining	Date of expiry of probation period	Date upto which probation is extended
1	2	3	4	5
1.	Dr. Geeta Suresh Nagvenkar	28-01-2016 (B.N.)	27-01-2018	27-07-2018
2.	Shri Clen Madeira	19-02-2016 (B.N.)	18-02-2018	18-08-2018
3.	Shri Rohit Ashok Kadam	28-01-2016 (B.N.)	27-01-2018	27-07-2018
4.	Shri Akshay Gurunath Potekar	10-02-2016 (B.N.)	09-02-2018	09-08-2018
5.	Smt. Neha Amey Naik Panvelkar	28-01-2016 (B.N.)	27-01-2018	27-07-2018
6.	Shri Deepesh Narayan Priolkar	25-02-2016 (B.N.)	24-02-2018	24-08-2018
7.	Shri Ajay Ramchandra Gaude	10-02-2016 (B.N.)	09-02-2018	09-08-2018
8.	Shri Kapil Chandrakant Phadte	28-01-2016 (B.N.)	27-01-2018	27-07-2018
9.	Shri Kedar Ashok Naik	01-02-2016 (B.N.)	31-01-2018	31-07-2018
10.	Shri Prasad Gurudas Volvoikar	29-02-2016 (B.N.)	28-02-2018	28-08-2018
11.	Shri Rohan Janardan Kaskar	28-01-2016 (B.N.)	27-01-2018	27-07-2018
12.	Shri Taha Idrees Haaziq	01-02-2016 (B.N.)	31-01-2018	31-07-2018

The period of probation is extended due to administrative exigencies in conducting the departmental examination during the period of probation.

This issues with the concurrence of the Goa Public Service Commission conveyed vide Letter No. COM/II/12/42(1)/2012/658 dated 11-09-2018.

By order and in the name of the Governor of Goa.

Harish N. Adconkar, Under Secretary (Personnel-I).

Porvorim, 4th October, 2018.

Department of Power
Office of the Chief Electrical Engineer

—
Order

No. 2015/CEE/Tech/SLDC/2013-2014/2263

Ex-post facto approval of the Government is hereby accorded to consider the services of Shri Laxmikant D. Kolvekar, Superintending Engineer (Elect.) to the post of Additional Chief Engineer-I on officiating basis, Group 'A' Gazetted in the Pay Matrix Level 13 instead of ad hoc promotion for the period from 01-01-2018 to 31-08-2018.

2. The above officiating posting in the post of Additional Chief Engineer, will not bestow on above officer, any claim for regular appointment and services tendered by above officer on officiating basis as Additional Chief Engineer shall not be counted for the purpose of seniority in the grade or eligibility for promotion to the post of Additional Chief Engineer.

By order and in the name of the Governor of Goa.

N. Neelakanta Reddy, Chief Electrical Engineer & ex officio Additional Secretary.

Panaji, 11th October, 2018.

—◆◆◆—
Department of Public Health

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Certificate

No. 45/1/2005-I/PHD/Part/2557

Read: 1) Government Order No. 45/1/2005-I/PHD/Part/1559 dated 14-06-2018.

2) Certificate No. 45/1/2005-I/PHD/Part/2267 dated 30-08-2018.

Certified that the character and antecedents of Dr. Ankita Subhash Lotliker, Junior Anaesthetist (Group "A" Gazetted) under Directorate of Health Services, mentioned in the above referred order has been verified by the District Magistrate, South Goa District, Margao vide letter No. 36/03/2018/MAG/229/8897 dated 30-07-2018 and it is revealed that there is nothing adverse reported against her.

This issues in supersession of Certificate No. 45/1/2005-I/PHD/Part/2267 dated 30-08-2018 read at preamble (2).

Maria Seomara De Souza, Under Secretary (Health).

Porvorim, 10th October, 2018.

Raj Bhavan

—
Relieving Order

No. GS/ADC-AF/PER/141/2016/2412

Read: 1) Communication No. Air HQ/C 21974/ADC/PO-1(Dep) dated 28-03-2016.

2) Order No. GS/ADC-AF/PER/141/2016/959 dated 19-04-2016.

3) Corrigendum No. GS/ADC-AF/PER/141/2016/1005 dated 25-04-2016.

4) Communication No. 2(22)/2013-D(MS) dated 22-01-2018 and Air HQ/21974/ADC/PO-1(Dep) dated 07-02-2018.

5) GS/ADC-AF/PER/141/2016/395 dated 13-02-2018.

6) AIRHQ/21641/29237/PO-1(ADM) dated 26-09-2018.

Sqn. Ldr. Samir S. Alve 29237-A F(P), Indian Air Force, ADC to Governor, at Raj Bhavan, Goa, stands relieved from this office with effect from 27th September, 2018 a.n.

2. Sqn. Ldr. Samir S. Alve is advised to report for duties to the place of his posting in accordance with the orders of the Indian Air Force Headquarters, Ministry of Defence, New Delhi.

3. Sqn. Ldr. Samir S. Alve has availed 11 days Casual Leave with a balance of 09 days Casual Leave to his credit for the calendar year 2018. Further, the officer has availed the following leaves during his tenure of deputation:-

- i. Annual Leave for 5 days from 17-10-2016 to 21-10-2016; (Order No. GS/ADC-AF/PER/141/2016/2402 dated 13-10-2016);
- ii. Annual Leave for 4 days from 07-02-2017 to 10-02-2017 and 5 days from 16-02-2017 to 20-02-2017 (Order No. GS/ADC-AF/PER/141/2017/295 dated 01-02-2017); and
- iii. Annual Leave for 5 days from 17-07-2017 to 21-07-2017 with LTC for self and family for the year 2017 (Order No. GS/ADC-AF/PER/141/2016/1508 dated 27-06-2018).

4. This issues with the approval of Hon'ble Governor.

Rupesh Kumar Thakur, IAS, Secretary to the Governor.

Raj Bhavan, 9th October, 2018.

Department of Water Resources

Office of the Chief Engineer

Order

No. 74-1-81/CE-WR/Adm.II/693

Government is pleased to order transfer/posting of following Executive Engineers/Surveyor of Works of this Department, to the offices mentioned against their names, with immediate effect.

Sr. No.	Name & designation	Present place of posting	Office to which posted on transfer
1.	Shri Narayanan E. Nair, Executive Engineer	O/o Executive Engineer, Works Division XIII, WRD, Gogal, Margao-Goa with addl. charge as Executive Engineer, Works Div. III, WRD, Ponda	As Surveyor of Works, O/o Superintending Engineer, Circle I, WRD, Porvorim-Goa.
2.	Shri M. K. Kurbet, Surveyor of Works	O/o Superintending Engineer, Circle I, WRD, Porvorim-Goa	As Executive Engineer, Works Division XIII, WRD, Gogal, Margao-Goa with addl. charge as Executive Engineer, Works Div. III, WRD, Ponda.

The concerned Head of Office should relieve the above transferees and endorse one copy of the same to this office.

By order and in the name of the Governor of Goa.

S. T. Nadkarni, Chief Engineer & ex officio Addl. Secretary (W.R.).

Porvorim, 12th October, 2018.

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